



**State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



Mr Chris Brissette  
PO Box 221  
Antrim, NH 03440

RE: North Elmwood Road, Hancock

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
AND HEARING  
NO. AF 2000-070**

**October 26, 2000**

**I. Introduction**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Mr. Chris Brissette, d/b/a Baron & Sons, pursuant to RSA 482-A:13 and Env-C 601.05. The Division is proposing that fines totaling \$4,000 be imposed against Chris Brissette for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. Parties**

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, N.H.
2. Mr. Chris Brissette is an individual having a mailing address of PO Box 221, Antrim, NH 03440.

**III. Summary of Facts and Law Supporting Claims**

1. RSA 482-A:13 authorizes the Commissioner of the Department of Environmental Services to impose administrative fines of up to \$2,000 per offense for violations of RSA 482-A.
2. Pursuant to RSA 482-A:13, the Commissioner has adopted Wt 800 to establish a schedule of fines for violations of RSA 482-A, rules adopted under RSA 482-A, and permits issued under RSA 482-A.
3. RSA 482-A:14 provides that failure, neglect or refusal to comply with RSA 482-A or rules adopted under that chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.
4. On January 4, 2000, DES personnel inspected a logging operation located on North Elmwood Road in Hancock ("the Property"). This inspection discovered the following:

a) Large logs were piled in Moose Brook, apparently in an effort to construct a crossing of the Brook. The logs extended for a distance of approximately 50', at a width of approximately 30', and were piled to a depth of 5'-6'.

b) A skidder crossed the Brook at this point, leaving a heavy layer of silt at the edge of, and in the Brook. Evidence of siltation existed for several hundred feet down the Brook.

c) A skidder had crossed a second brook, with no crossing devices in place. Ruts existed on the banks on both sides of the brook, and into the brook.

d) A wetland area had been rutted through with heavy equipment, for a distance of more than 200 feet, in an area with standing water, a wide variety of ferns and sphagnum moss on either side of the skidder trail. No crossing devices had been used.

e) Trees had been cut and left as slash in an extensive wetland.

f) Ruts led from the skidder trail into standing water, and up to another logging area. No crossing devices had been used to access this logging site.

g) Siltation had been deposited for more than 200 linear feet in a stream which runs through this wetland area.

5. RSA 482-A:3, I states that..."No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in or adjacent to the waters of the state without a permit from [DES]."

6. RSA 482-A:4 specifies that waters and adjacent areas to which RSA 482-A applies are defined to include: "II. Wherever fresh water flows or stands and in all areas above tidal waters not included in paragraph I of this section, it shall apply (in addition to great ponds or lakes of 10 acres or more in natural area as provided for in RSA 482-A:16-20 and RSA 482-A:21-25) to those portions of great ponds or lakes created by the raising of the water level of the same, whether by public or private structure, and to all surface waters of the state as defined by RSA 485-A:2 which contain fresh water, including the periodic flooding by fresh water including the surrounding shore."

#### **IV. Violations Alleged**

1. Mr. Chris Brissette has violated RSA 482-A by placing fill in a river without a permit from DES

2. Mr. Chris Brissette has violated RSA 482-A by changing the course of, or disturbing, more than 200 linear feet of an intermittent or perennial nontidal stream or river channel or its banks without a permit from the Department.

3. Mr. Chris Brissette has violated RSA 482-A by rutting through wetlands on the property without proper crossing devices, and left slash in a wetland. These actions constitute a complete disregard for proper forestry practices, as set forth in the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, April, 1996.

## V. Proposed Administrative Fines

For the violation identified in IV. 1. above, Env-C 614.05(b)(4) specifies a fine of \$2,000.

2. For the violation identified in IV. 2, above, Env-C 614.05(c) specifies a fine of \$2,000.

3. For the violation identified in IV. 3, above, Env-C 614.06(f) specifies a fine of \$2,000.

**The total fine being sought is \$6,000.**

## VI. Hearing, Required Response

You have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, December 4, 2000 at 9:00 a.m** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, N.H.

**Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than November 20, 2000, using the enclosed form as follows:**

1. If you plan to attend the hearing, please sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form.

2. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.

3. If you wish to discuss the possibility of settling the case, please sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

**If you wish to have a hearing but are unable to attend as scheduled, you must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If you do not notify Mr. Ballentine in advance and do not attend the hearing, the hearing will be conducted in your absence in accordance with Env-C 204.09.**

## VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by "a preponderance of the evidence" means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violation(s) and that the total amount of fine(s)

sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

\* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:


1. The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

**\*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\***

**The hearing that has been scheduled is a formal hearing.** The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

**If you wish to have an informal meeting to discuss the issues, you must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.**

**Information regarding this proposed fine may be made available to the public via DES's Web page ([www.des.state.nh.us](http://www.des.state.nh.us)). If you have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.**

  
**COPY**  
Harry T. Stewart,  
Water Division

Enclosures: (NHDES Fact sheet #CO-2 1999)

cc: Gretchen Rule, DES Enforcement Coordinator  
Susan Alexant, DES Rules & Hearings Attorney  
Harry T. Stewart, P.E., Director  
Hancock Conservation Commission  
Hancock Board of Selectmen  
Marjory Swope, NHACC  
Arthur Cernota

**\*\*\* RETURN THIS PAGE ONLY \*\*\***

**APPEARANCE**

I/we will attend the hearing scheduled for **Monday, December 4, 2000 at 9:00 a.m.** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

**WAIVER OF HEARING**

I/we certify that I/we understand my/our right to a hearing regarding the imposition of the proposed administrative fine and that I/we hereby waive those rights. The fine payment in the amount of \$6,000 made payable to "Treasurer, State of New Hampshire" is enclosed.\*

*\*If payment is made by a check, draft, or money order which is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

**RETURN THIS PAGE ONLY TO:**

**James Ballentine, Enforcement Paralegal  
DES Legal Unit  
6 Hazen Drive  
P.O. Box 95  
Concord, NH 03302-0095**